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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/764,995	01/26/2004	Philip Stephen Smith	PA0959.ap.US	6766

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EXAMINER
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MOSSER, ROBERT E

ART UNIT	PAPER NUMBER
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3714

MAIL DATE	DELIVERY MODE
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09/14/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

10/764,995

Applicant(s)

SMITH ET AL.

Examiner

Robert Mosser

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 17 August 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-17 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on August 17<sup>th</sup>, 2007 has been entered.

### ***Terminal Disclaimer***

The terminal disclaimer filed August 13<sup>th</sup>, 2007 has been received, placed with the application file, and is presently pending review and acceptance. The double patenting rejection as presented below, will remaining pending until such time as the terminal disclaimer is reviewed and accepted by the appropriate office personnel.

### ***Double Patenting***

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir.

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1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1 through 17 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over at least claim 75 of copending Application No. 10/910713. Although the conflicting claims are not identical, they are not patentably distinct from each other because the presented claim utilize a similarly described video apparatus for the incorporation of composite dealer images in a card game.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

This rejection though pending is considered held in abeyance until an indication of allowable subject matter is presented to the Applicant.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1 through 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Toyoda (US 2004/0063482) in further view of Reynolds et al (US 2002/0147987).

*[The section below entitled Response to Arguments is incorporated herein by reference]*

Claims 1 through 10: Toyoda teaches an automated wagering system including a first bank of common displays (*Toyoda* Elements 32, 42) containing a composite image including a dealer and background elements (*Toyoda* Figure 4) visible to the game participants (*Toyoda* Figure 1) and a second bank of individual displays associated with each respective game participant for displaying virtual player cards and captured player portraits (*Toyoda* Paragraph 64, 133 & Elm 52). Toyoda further teaches the inclusion of at least one processor (*Toyoda* Figures 2-3) enabling device operation.

Toyoda further teaches the incorporation of a picture in picture type display format where in player images are captured and displayed in the corner of each player display (*Toyoda* S46, S47, & Paragraphs 133,153-154) and the formation of a

composite dealer image including multi-layer composite images including animation (Toyoda Fig 4 Paragraphs 113-114, 118-119). As the composite images of Toyoda conceal portions of the background images they are understood to include masking to form a merged image as shown in the above referenced figures of Toyoda.

As mentioned above, Toyoda teaches at least one processor connected to two distinct feeds of video information wherein the video feeds of video information provide multiple sources of live video information and is effected through the use of multiple video cameras (*Toyoda* Elm 44, Paragraph 70, Figures 2, 17) to utilize multiple video images in the formation of a composite image (*Toyoda* Figures 11, 12c, 13c). Toyoda however is arguably silent regarding the explicit utilization of these video feeds and resultant images to form a composite image of a dealer against a background. In a related invention directed to the combination of multiple video feeds Reynolds et al teaches that composite images may be used in interactive games (*Reynolds* Para 7) to customize the combined display image to a specific demographic group, wherein such groups may further be determined by location (*Reynolds* Para 5-6, Fig 3). It would have been obvious to one of ordinary skill in the art at the time of invention to have incorporated the teachings of Reynolds et al, into the composite video gaming system of Toyoda in order to provide a composite dealer image reflective of the geographical location of the gaming device.

Both the systems of Toyoda and Reynolds et al are digital computing systems accordingly it is implicitly understood that the data manipulated is stored in the format of files, since both teachings would be inoperable if they were unable to distinguish various

data portions from one another in the retrieval of information such as described in paragraph 152 of Toyoda.

Claims 11 through 16: Toyoda teaches the utilization of a singular CPU in each table game arrangement such as shown in figures 1 and 2 wherein the singular processor performs the functions of a processor at each player position, a common dealer processor, and a main processor. All of which are in communication with one another as they are integral to one another. The applicant's present arrangement of processors is understood to be the separation of the singular processor as taught by the prior art of Toyoda into multiple discrete devices. MPEP 2144.04V sets forth that making a singular element separable or alternatively multiple separable parts integral is obvious (In re Larson, 340 F.2d 965, 968, 144 USPQ 347, 349 (CCPA 1965), In re Dulberg, 289 F.2d 522, 523, 129 USPQ 348, 349 (CCPA 1961)). It would have been obvious to one of ordinary skill in the art at the time of invention to have distributed the singular CPU of Toyoda into multiple CPUs including a controller CPU, a Dealer CPU, and a respective CPU at each of the player stations in order to offer system redundancy and/or provide a system wherein multiple user terminals could be added without being limited by the central CPUs processing ability. Alternatively the additional processors beyond the central processor may be additionally considered embodied in cell phone devices of Toyoda (Toyoda paragraph 71).

Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over Toyoda (US 2004/0063482)/ Reynolds et al (US 2002/0147987) as applied to claims 1 through 16 above and in further view of Hazzard (US 6,731,416)

Toyoda the incorporation of cards games including poker and the need to conceal ones hand from unwanted onlookers (*Toyoda* Paragraph 172) is silent regarding the incorporation of a changeable light filter that changes the displays transmission of images based on the angle of view. In the art of screen privacy protection, Hazzard teaches the use of a holographic display filter changes the displays transmission of images based on the angle of view in order to ensure that unwanted onlookers are unable to view information presented on a display screen (*Hazzard* Abstract & Col 1:32-44). It would have been obvious to one of ordinary skill in the art at the time of invention to have incorporated the holographic privacy filter of Hazzard to assist a player in concealing their cards from unwanted onlookers as taught by Toyoda.

### ***Response to Arguments***

Applicant's arguments with respect to claims 1-17 have been considered but are not persuasive.

A) The Applicant argues that the Double patenting rejection as presented above has been overcome by the presentation of a terminal disclaimer directed to the relevant patents. The review of this Terminal disclaimer is presently pending. Upon the acceptance of the disclaimer by the appropriate office personal this rejection will be overcome.



B(i) The Applicant proposes that the processor of Toyoda would be insufficient to perform the operation of merging two video feeds (Page 7 of the Applicant's remarks dated August 13<sup>th</sup>, 2007). It is however noted that the references in combination applied against the application teach the implementation of merged video on exemplary hardware. Applicant's suggestion that the Toyoda reference does not demonstrate the combination of multiple images is unclear given figures 4 and 13C of Toyoda.

B(ii) The Applicant contends with noted emphasis that prior art of Toyoda does not teach a combinational display wherein the elements of the combination are drawn from two separate feeds and displayed on the main display. With reference to this the Examiner notes that Toyoda provides for multiple feeds and the presentation of the feeds on a common display (camera and database see figures 4 and 15 of Toyoda), while the combination of references of Toyoda and Reynolds is provided to replace a possibly static background of the dealer with a live background. Hence as the holding of rejection is not premised on purely the teaching of either reference individually but instead what these references would have suggested in combination.

Animated, dynamic, live, and video are quickly becoming terms that are being discussed during prosecution without any clear delineation or definition that would for example stop a real time animation of cards dealing from not being a live and dynamic video image. The point here is that the Applicant is arguing novelty premised on a narrow interpretation of terminology which the claim is not presently limited to. In distinction to the above Applicant's claim 2 and those depending therefrom set forth a video camera for generating live video. While the player images shown in Toyoda for

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teaching a live video feed has proven a point of contention by the Applicant's perspective (Noting that the reference additionally captures video images) the reference of Reynolds further incorporates therein to further support the utilization of a video camera for providing a live video source (see 10/076950 incorporated by reference into Reynolds).

B(ii) The Applicant argues that the association of a processing board with each player position as a defining point of novelty however the Applicant has not provided any further structure to the claim elaborate on how the processing board operates or is defined. This feature argued as nonobviousness, is presently absent a defined structure and a rational associated therewith to support the present argument. Additionally the rejection as referenced maybe readily evidenced by Dote (USP 5,221,083) in the disclosed controllers of the Satellites terminals (*Dote* Col 1:67-2:2).

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert Mosser whose telephone number is (571)-272-4451. The examiner can normally be reached on 8:30-4:30 Monday-Thursday.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Pezzuto can be reached on (571) 272-6996. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/RM/

September 10<sup>th</sup>, 2007



ROBERT E. PEZZUTO  
SUPERVISORY PRIMARY EXAMINER